



Billing code 3410-02

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS-FV-12-0064; FV13-985-1 PR]

**Marketing Order Regulating the Handling of Spearmint Oil
Produced in the Far West; Salable Quantities and Allotment
Percentages for the 2013-2014 Marketing Year**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2013-2014 marketing year, which begins on June 1, 2013. This proposal invites comments on the establishment of salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 1,344,858 pounds and 65 percent, respectively, and for Class 3 (Native) spearmint oil of 1,432,189 pounds and 61 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies

and prices to help maintain stability in the spearmint oil market.

DATES: Comments must be received by [INSERT DATE 15 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet:

<http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at:

<http://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, or Gary Olson, Regional Director, Northwest

Marketing Field Office, Marketing Order and Agreement
Division, Fruit and Vegetable Program, AMS, USDA;
Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail:
Barry.Broadbent@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying
with this regulation by contacting Jeffrey Smutny,
Marketing Order and Agreement Division, Fruit and Vegetable
Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237,
Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax:
(202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued
under Marketing Order No. 985 (7 CFR Part 985), as amended,
regulating the handling of spearmint oil produced in the
Far West (Washington, Idaho, Oregon, and designated parts
of Nevada and Utah), hereinafter referred to as the
"order." The order is effective under the Agricultural
Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-
674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this
proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive
Order 12988, Civil Justice Reform. Under the marketing
order now in effect, salable quantities and allotment

percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2013-2014 marketing year, which begins on June 1, 2013.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Committee meets annually in the fall to adopt a marketing policy for the ensuing marketing year or years.

In determining such marketing policy, the Committee considers a number of factors, including, but not limited to, the current and projected supply, estimated future demand, production costs, and producer prices for all classes of spearmint oil. Input from spearmint oil handlers and producers regarding prospective marketing conditions is considered as well. During the meeting, the Committee recommends to USDA any volume regulations deemed necessary to meet market requirements and to establish orderly marketing conditions for Far West spearmint oil. If the Committee's marketing policy considerations indicate a need for limiting the quantity of any or all classes of spearmint oil marketed, the Committee subsequently recommends the establishment of a salable quantity and allotment percentage for such class or classes of oil for the forthcoming marketing year.

The salable quantity represents the total amount of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the marketing year. Each producer is allotted a prorated share of the salable quantity by applying the allotment percentage to that producer's allotment base for each applicable class of spearmint oil. The producer allotment

base is each producer's quantified share of the spearmint oil market based on a statistical representation of past spearmint oil production, with accommodation for reasonable and normal adjustments to such base as prescribed by the Committee and approved by USDA. Salable quantities are established at levels intended to meet market requirements and to establish orderly marketing conditions. Committee recommendations for volume controls are made well in advance of the period in which the regulations are to be effective, thereby allowing producers the chance to adjust their production decisions accordingly.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the full eight-member Committee met on October 17, 2012, and recommended salable quantities and allotment percentages for both classes of oil for the 2013-2014 marketing year. The Committee, in a vote of six members in favor and two members opposed, recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 1,344,858 pounds and 65 percent, respectively. The two members opposing the action felt that the proposed levels were too high and favored establishing a smaller salable quantity and allotment percentage for Scotch spearmint oil. For Native

spearmint oil, the Committee, in a vote of six members in favor and two members opposed, recommended the establishment of a salable quantity and allotment percentage of 1,432,189 pounds and 61 percent, respectively. Once again, the two members opposing the action supported volume regulation but favored an undetermined lower salable quantity and allotment percentage for Native spearmint oil than what was proposed.

This action would limit the amount of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2013-2014 marketing year, which begins on June 1, 2013. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

Class 1 (Scotch) Spearmint Oil

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, Oregon, and a portion of Nevada and Utah. Scotch type oil is also produced in seven other States: Indiana, Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin. Additionally, Scotch spearmint oil is produced outside of the U.S., with China and India being the largest global competitors of domestic Scotch spearmint

oil production.

The Far West's share of total global Scotch spearmint oil sales has varied considerably over the past several decades, from as high as 72 percent in 1988, and as low as 27 percent in 2002. More recently, sales of Far West Scotch spearmint oil have been approximately 50 percent of world sales, and are expected to hold steady, or increase slightly, in upcoming years. In addition, imports of foreign produced spearmint oil into the U.S. have recently been trending down, while exports of domestic spearmint oil have been trending up. Consequently, competition in the domestic market from foreign produced spearmint oil has decreased and the demand for Far West spearmint oil, both domestically and abroad, has been very strong.

The Scotch spearmint industry is emerging from the very difficult market environment that has existed in the past few years. Many of the negative market components that were present from 2008 through 2011 in the spearmint oil industry have corrected. During that period, increased production and weakened market demand for Scotch spearmint oil combined to create large stocks of excess oil held in reserve. However, most recently, production of Scotch spearmint oil has moderated, trade demand for Scotch

spearmint oil has increased, and excess inventory levels have dropped dramatically. In fact, production of Scotch spearmint oil will need to increase during the 2013 season to meet the anticipated market demand.

Although the spearmint oil industry continues to have some concerns over the strength of the U.S. economy, marketing conditions for Scotch spearmint oil have improved significantly. Lower inventories, steady to increasing production, and strong projected demand are all positive indicators of improving marketing conditions for Scotch spearmint oil. Inventories, production, and market demand are now at levels that are considered healthy for the industry.

Certain factors may be contributing to the recent increase in demand for Far West Scotch spearmint oil. First, although China and India have been significant suppliers of spearmint oil for the past 15 years, they have started to replace some spearmint acreage with other mint varieties, such as *Mentha arvensis* (wild mint), and other non-mint competing crops. In addition, both countries are utilizing more of their domestically produced spearmint oil, removing oil that might otherwise have been exported. Also, the Midwest region of the U.S. is experiencing a

significant reduction in Scotch spearmint oil production. This decrease in regional production is partly due to unexpected disease and weather related factors and partly the result of competition from other alternate crops, such as corn and soybeans, which are currently experiencing higher than average returns. Lastly, improving global economic conditions have led to increased consumption of spearmint flavored products.

The Committee estimates that the carry-in of Scotch spearmint oil on June 1, 2013, the primary measure of excess supply, will be approximately 16,570 pounds. This amount is down from the previous year's estimate of 149,740 pounds and is lower than the minimum carry-in quantity that the Committee would consider to be favorable.

Production of Scotch spearmint oil has decreased in recent years in response to high Scotch spearmint oil inventory levels and below average market demand. Production dropped from a high of 1,050,700 pounds in 2009 to an estimated 621,480 pounds in 2012. Total industry production of Scotch spearmint oil is now below the level that the Committee views as optimum. The Committee expects production will increase during the 2013 season in response to the strong market demand currently observed in the

industry and the low inventory levels of Scotch spearmint oil available to the market. The Committee considers the current trends in supply and demand to be favorable, as it signals an end to the continuing oversupply situation in Scotch spearmint oil and the initiation of a period when supply and demand are in harmony.

Handlers indicate that increasing consumer demand for mint flavored products provide a positive expectation for long-term increases in the demand for Far West Scotch spearmint oil. Spearmint oil handlers have indicated that demand for Scotch spearmint oil has been gaining strength. Handlers who had projected the 2012-2013 trade demand for Far West Scotch Spearmint oil to be in the range of 825,000 pounds to 1,100,000 pounds now expect it to increase to between 900,000 pounds to 1,200,000 pounds during the 2013-2014 marketing year.

Given the improving economic indicators for the Far West Scotch spearmint oil industry outlined above, the Committee took a very positive perspective into the discussion of establishing appropriate salable quantities and allotment percentages for the upcoming season. At the October 17, 2012, meeting, the Committee recommended the 2013-2014 Scotch spearmint oil salable quantity of

1,344,858 pounds and an allotment percentage of 65 percent. The Committee utilized sales estimates for 2013-2014 Scotch spearmint oil, as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil production and inventory statistics, to arrive at these recommendations. The volume control levels recommended by the Committee represent an increase of 566,418 pounds and 27 percentage points over the previous year's initial salable quantity and allotment percentage, reflecting a much more positive assessment of the industry's current economic conditions.

The Committee estimates that about 1,200,000 pounds of Scotch spearmint oil may be sold during the 2013-2014 marketing year. When considered in conjunction with the estimated carry-in of 16,570 pounds of Scotch spearmint oil on June 1, 2013, the recommended salable quantity of 1,344,858 pounds results in a total available supply of approximately 1,361,428 pounds of Scotch spearmint oil during the 2013-2014 marketing year. The Committee estimates that carry-in of Scotch spearmint oil into the 2014-2015 marketing year, which begins June 1, 2014, would be 161,428 pounds, an increase of 144,858 pounds from the beginning of the 2013-2014 marketing year.

The Committee's stated intent in the use of marketing order volume control regulations for Scotch spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation for the proposed Scotch spearmint oil salable quantity and allotment percentage for the 2013-2014 marketing year based on the information discussed above, as well as the data outlined below.

(A) Estimated carry-in of Scotch spearmint oil on June 1, 2013 - 16,570 pounds. This figure is the difference between the revised 2012-2013 marketing year total available supply of 986,570 pounds and the estimated 2012-2013 marketing year trade demand of 970,000 pounds.

(B) Estimated trade demand of Scotch spearmint oil for the 2013-2014 marketing year - 1,200,000 pounds. This figure is based on input from producers at five Scotch spearmint oil production area meetings held in late September and early October 2012, as well as estimates provided by handlers and other meeting participants at the October 17, 2012, meeting. The average estimated trade demand provided at the five production area meetings is 1,120,000 pounds, which is 35,000 pounds less than the

average of trade demand estimates submitted by handlers.

The average of Far West Scotch spearmint oil sales over the last five years is 772,543 pounds.

(C) Salable quantity of Scotch spearmint oil required from the 2013-2014 marketing year production - 1,183,430 pounds. This figure is the difference between the estimated 2013-2014 marketing year trade demand (1,200,000 pounds) and the estimated carry-in on June 1, 2013 (16,570 pounds). This figure represents the minimum salable quantity that may be needed to satisfy estimated demand for the coming year with no carryover.

(D) Total estimated allotment base of Scotch spearmint oil for the 2013-2014 marketing year - 2,069,012 pounds. This figure represents a one percent increase over the revised 2012-2013 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) Computed Scotch spearmint oil 2013-2014 marketing year allotment percentage - 57.2 percent. This percentage is computed by dividing the minimum required salable

quantity (1,183,430 pounds) by the total estimated allotment base (2,069,012 pounds).

(F) Recommended Scotch spearmint oil 2013-2014 marketing year allotment percentage - 65 percent. This is the Committee's recommendation and is based on the computed allotment percentage (57.2 percent), the average of the computed allotment percentage figures from the five production area meetings (55.8 percent), and input from producers and handlers at the October 17, 2012, meeting. The recommended 65 percent allotment percentage is also based on the Committee's determination that the computed percentage (57.2 percent) may not adequately supply the potential 2013-2014 Scotch spearmint oil market.

(G) Recommended Scotch spearmint oil 2013-2014 marketing year salable quantity - 1,344,858 pounds. This figure is the product of the recommended allotment percentage (65 percent) and the total estimated allotment base (2,069,012 pounds).

(H) Estimated total available supply of Scotch spearmint oil for the 2013-2014 marketing year - 1,361,428 pounds. This figure is the sum of the 2013-2014 recommended salable quantity (1,344,858 pounds) and the estimated carry-in on June 1, 2013 (16,570 pounds).

Class 3 (Native) Spearmint Oil

The Native spearmint oil industry is experiencing market conditions similar to those observed in the Scotch spearmint oil market. Approximately 90 percent of U.S. production of Native spearmint oil is produced within the Far West production area, thus domestic production outside this area is not a major factor in the marketing of Far West Native spearmint oil. This has been an attribute of U.S. production since the order's inception. A minor amount of domestic Native spearmint oil is produced outside of the Far West region in the States of Indiana, Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin.

According to the Committee, very little true Native spearmint oil is produced outside of the United States. However, India has been producing an increasing quantity of spearmint oil with qualities very similar to Native spearmint oil. Committee records show that in 1996 the Far West accounted for nearly 93 percent of the global sales of Native or Native quality spearmint oil. By 2008, that share had declined to only 48 percent. Since then, the percentage has been increasing and Far West Native

spearmint oil is estimated to be over 70 percent of global sales in 2012.

Despite the fact that Far West Native spearmint oil has been gaining world market share, the industry has endured challenging marketing conditions over the past five years. Overproduction, coupled with a decrease in demand during the global economic recession, created an excess inventory situation for Native spearmint oil that negatively impacted the industry. However, most recently, production of Native spearmint oil has moderated, trade demand for Native spearmint oil has increased, and excess inventory levels have dropped to levels considered optimal by the Committee.

When the Committee met on October 17, 2012, to consider volume regulations for the upcoming 2013-2014 marketing year, the general consensus within the Native spearmint oil industry was that marketing conditions had improved over recent years and are expected to keep improving into the future. The production of Far West Native spearmint oil, which declined from a high of 1,453,896 pounds in 2009 to approximately 1,210,260 pounds in 2012, is anticipated to remain steady during the 2013 season. The Committee further expects that production will

be more in line with the projected demand of Native spearmint oil in upcoming years.

Excess Native spearmint oil inventory, as measured by oil held in reserve by producers and reported by the Committee, is estimated to be 379,006 pounds at the end of the 2012-2013 marketing year, down from a recent high of 606,942 pounds in 2011. Reserve Native spearmint oil is approaching the level that the Committee believes is optimum for the industry.

In addition to an improved supply situation, demand for Far West Native spearmint oil has been improving. Spearmint oil handlers, who previously projected the 2012-2013 trade demand for Far West Native spearmint oil in the range of 1,275,000 pounds to 1,450,000 pounds, with an average of 1,350,000 pounds, have projected trade demand for the 2013-2014 marketing period to be in the range of 1,200,000 pounds to 1,500,000 pounds, with an average of 1,400,000.

Given the economic indicators for the Far West Native spearmint oil industry outlined above, the Committee took an optimistic perspective into the discussion of establishing appropriate salable quantities and allotment percentages for the upcoming season.

As such, at the October 17, 2012, meeting, the Committee recommended a 2013-2014 Native spearmint oil salable quantity of 1,432,189 pounds and an allotment percentage of 61 percent. The Committee utilized Native spearmint oil sales estimates for 2013-2014, as provided by several of the industry's handlers, as well as historical and current Native spearmint oil market statistics to establish these thresholds. These recommended volume control levels represent an increase of 268,887 pounds and 11 percentage points over the previous year's initially established salable quantity and allotment percentage. Should these levels prove insufficient to adequately supply the market, the Committee has the authority to recommend an intra-seasonal increase, as it has done in the past two marketing periods, if demand rises beyond expectations.

The Committee estimates that approximately 1,425,000 pounds of Native spearmint oil may be sold during the 2013-2014 marketing year. When considered in conjunction with the estimated carry-in of 43,411 pounds of Native spearmint oil on June 1, 2013, the recommended salable quantity of 1,432,189 pounds results in an estimated total available supply of 1,475,600 pounds of Native spearmint oil during the 2013-2014 marketing year. The Committee also estimates

that carry-in of Native spearmint oil at the beginning of the 2014-2015 marketing year will be approximately 50,600 pounds.

The Committee's stated intent in the use of marketing order volume control regulations for Native spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation for the proposed Native spearmint oil salable quantity and allotment percentage for the 2013-2014 marketing year based on the information discussed above, as well as the data outlined below.

(A) Estimated carry-in of Native spearmint oil on June 1, 2013 - 43,411 pounds. This figure is the difference between the revised 2012-2013 marketing year total available supply of 1,418,411 pounds and the estimated 2012-2013 marketing year trade demand of 1,375,000 pounds.

(B) Estimated trade demand of Native spearmint oil for the 2013-2014 marketing year - 1,425,000 pounds. This estimate is established by the Committee and is based on input from producers at the six Native spearmint oil production area meetings held in late September and early

October 2012, as well as estimates provided by handlers and other meeting participants at the October 17, 2012, meeting. The average estimated trade demand provided at the six production area meetings was 1,354,167 pounds, whereas the handler estimate ranged from 1,200,000 pounds to 1,500,000 pounds, and averaged 1,400,000 pounds. The average of Far West Native spearmint oil sales over the last five years is 1,158,520 pounds.

(C) Salable quantity of Native spearmint oil required from the 2013-2014 marketing year production - 1,381,589 pounds. This figure is the difference between the estimated 2013-2014 marketing year trade demand (1,425,000 pounds) and the estimated carry-in on June 1, 2013 (43,411 pounds). This is the minimum amount that the Committee believes would be required to meet the anticipated 2013-2014 Native spearmint oil trade demand.

(D) Total estimated allotment base of Native spearmint oil for the 2013-2014 marketing year - 2,347,850 pounds. This figure represents a one percent increase over the revised 2012-2013 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production

provisions of § 985.53(e). The revision is usually minimal.

(E) Computed Native spearmint oil 2013-2014 marketing year allotment percentage - 58.8 percent. This percentage is computed by dividing the required salable quantity (1,381,589 pounds) by the total estimated allotment base (2,347,850 pounds).

(F) Recommended Native spearmint oil 2013-2014 marketing year allotment percentage - 61 percent. This is the Committee's recommendation based on the computed allotment percentage (58.8 percent), the average of the computed allotment percentage figures from the six production area meetings (56.5 percent), and input from producers and handlers at the October 17, 2012, meeting. The recommended 61 percent allotment percentage is also based on the Committee's determination that the computed percentage (58.8 percent) may not adequately supply the potential 2013-2014 Native spearmint oil market.

(G) Recommended Native spearmint oil 2013-2014 marketing year salable quantity - 1,432,189 pounds. This figure is the product of the recommended allotment percentage (61 percent) and the total estimated allotment base (2,347,850 pounds).

(H) Estimated available supply of Native spearmint oil for the 2013-2014 marketing year - 1,475,600 pounds.

This figure is the sum of the 2013-2014 recommended salable quantity (1,432,189 pounds) and the estimated carry-in on June 1, 2013 (43,411 pounds).

The salable quantity is the total quantity of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 1,344,858 pounds and 65 percent, and 1,432,189 pounds and 61 percent, respectively, are based on the goal of establishing and maintaining market stability. The Committee anticipates that this goal would be achieved by matching the available supply of each class of Spearmint oil to the estimated demand of such, thus avoiding extreme fluctuations in inventories and prices.

The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil

which may develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity. The order makes the provision for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions. In addition, producers who produce more than their annual allotments during the 2013-2014 marketing year may transfer such excess spearmint oil to producers who have produced less than their annual allotment, or, up until November 1, 2013, place it into the reserve pool to be released in the future in accordance with market needs.

This proposed regulation, if adopted, would be similar to regulations issued in prior seasons. The average allotment percentage for the five most recent marketing years for Scotch spearmint oil is 38.8 percent, while the average allotment percentage for the same five-year period for Native spearmint oil is 52.2 percent. Costs to producers and handlers resulting from this proposed rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this proposed rule, USDA has reviewed the Committee's marketing policy statement for the 2013-2014 marketing year. The Committee's marketing policy

statement, a requirement whenever the Committee recommends volume regulation, fully meets the intent of § 985.50 of the order.

During its discussion of potential 2013-2014 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, the Committee considered historical sales, as well as changes

and trends in production and demand. This proposed rule also provides producers with information on the amount of spearmint oil that should be produced for the 2013-2014 season in order to meet anticipated market demand.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 36 producers of Scotch spearmint oil and approximately 91 producers of Native spearmint oil in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those

having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 36 Scotch spearmint oil producers and 29 of the 91 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably

more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for purposes of weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, a majority of spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk from market fluctuations. Such small producers generally need to market their entire annual allotment and do not have income from other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit small producers more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be

classified as small entities, the volume control feature of this order has small entity orientation.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2013-2014 marketing year. The Committee recommended this action to help maintain stability in the spearmint oil market by matching supply to estimated demand, thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities that may be purchased or handled during the marketing year through volume regulations allows producers to plan their spearmint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this proposed rule.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by handlers. Notwithstanding the recent global recession and the overall negative impact on demand for consumer goods that utilize

spearmint oil, demand for spearmint oil tends to change slowly from year to year.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of spearmint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have virtually no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of relatively high production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability of the spearmint oil market is illustrated by the fact that the coefficient of variation (a standard measure of variability; "CV") of Far West spearmint oil grower prices for the period 1980-2011 (when the marketing order was in effect) is 0.19 compared to 0.34 for the decade prior to the promulgation of the

order (1970-79) and 0.48 for the prior 20-year period (1960-79). This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 48 percent of the 32-year average (1.897 million pounds from 1980 through 2011) and the largest crop was approximately 162 percent of the 32-year average. A key consequence is that, in years of oversupply and low prices, the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service.)

The wide fluctuations in supply and prices that result from this cycle, which were even more pronounced before the creation of the order, can create liquidity problems for some producers. The order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the increase in production costs. While prices have been relatively steady, the cost of production has increased to the extent that plans to plant spearmint may be postponed or changed indefinitely. Producers are also enticed by the prices of alternative crops and their lower cost of production.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil of each applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA

approves a Committee recommendation to increase the salable quantity and allotment percentage for a class of oil and make a portion of the pool available. However, limited quantities of reserve oil are typically sold by one producer to another producer to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies. All of these provisions need to be exercised prior to November 1 of each year.

In any given year, the total available supply of spearmint oil is composed of current production plus carryover stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carryout. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to

stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks, which are increased in large production years, are drawn down in years where the crop is short.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied. This could result in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated trade demand for the 2013-2014 marketing year for both classes of oil at 2,625,000 pounds, and that the expected combined salable carry-in will be 59,981 pounds. This results in a combined required salable quantity of 2,565,019 pounds. With volume control, sales by producers for the 2013-2014 marketing year would be limited to 2,777,047 pounds (the recommended salable

quantity for both classes of spearmint oil).

The recommended allotment percentages, upon which 2013-2014 producer allotments are based, are 65 percent for Scotch and 61 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a \$1.35 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The surplus situation for the spearmint oil market that would exist without volume controls in 2013-2014 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this proposed rule for both

classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for both classes of spearmint oil because of the severe price-depressing effects that would occur without volume control.

After computing the initial 57.2 percent Scotch spearmint oil allotment percentage, the Committee considered various alternative levels of volume control for Scotch spearmint oil. Given the moderately improving marketing conditions, there was consensus that the Scotch spearmint oil allotment percentage for 2013-2014 should be more than the percentage established for the 2012-2013 marketing year (38 percent). After considerable discussion, the eight-member committee, on a vote of six members in favor and two members opposed, determined that 1,344,858 pounds and 65 percent would be the most effective Scotch spearmint oil salable quantity and allotment percentage, respectively, for the 2013-2014 marketing year. The two dissenting members felt that the salable quantity and allotment percentage should be set at an unidentified lower level.

The Committee was also able to reach a consensus regarding the level of volume control for Native spearmint

oil. After first determining the computed allotment percentage at 58.8 percent, the Committee, in a vote of six members in favor and two members opposed, recommended 1,432,189 pounds and 61 percent for the effective Native spearmint oil salable quantity and allotment percentage, respectively, for the 2013-2014 marketing year. The two dissenting members felt that the salable quantity and allotment percentage should be set at an unidentified lower level.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season

average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended would achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2013-2014 could decline substantially below current levels.

According to the Committee, the recommended salable quantities and allotment percentages are expected to facilitate the goal of establishing orderly marketing conditions for Far West spearmint oil.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Generic Vegetable and Specialty Crops. No changes in those requirements as a result of this action

are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would establish the salable quantities and allotment percentages of Class 1 (Scotch) spearmint oil and Class 3 (Native) spearmint oil produced in the Far West during the 2013-2014 marketing year. Accordingly, this proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and

participate in Committee deliberations on all issues. Like all Committee meetings, the October 17, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Jeffrey Smutney at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) the 2013-2014 fiscal period begins on June 1, 2013, and a final determination on the salable quantities and allotment percentages should be made prior to handlers purchasing from, or handling on behalf of, producers any oil for the ensuing marketing year; and (2) handlers are aware of this action, which was recommended by the Committee at a public

meeting and is similar to other salable quantities and allotment percentages issued in past years.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until thirty days after publication in the Federal Register because a final determination of salable quantities and allotment percentages should be in effect prior to the start of the 2013-14 fiscal period, which begins June 1, 2013.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is proposed to be amended as follows:

PART 985 - MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. A new § 985.232 is added to read as follows:

[**Note:** This section will not appear in the Code of Federal Regulations.]

**§ 985.232 Salable quantities and allotment percentages -
2013-2014 marketing year.**

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2013, shall be as follows:

(a) Class 1 (Scotch) oil -- a salable quantity of 1,344,858 pounds and an allotment percentage of 65 percent.

(b) Class 3 (Native) oil -- a salable quantity of 1,432,189 pounds and an allotment percentage of 61 percent.

Dated: April 9, 2013

David R. Shipman
Administrator
Agricultural Marketing Service

[FR Doc. 2013-08681 Filed 04/12/2013 at 8:45 am;
Publication Date: 04/15/2013]